IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

::

JUDGMENT

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C.P. Chellani Vs. R.S.R.T.C. & Ors.

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D.B. Civil Special Appeal (Writ) No. 503/1997

in

S.B. Civil Writ Petition No. 2960/1996

Date of order :: July 9, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Rajendra Soni for the appellant
Mr. Virendra Lodha for the respondents

(ORAL, Per Hon'ble Mr. Gandhi, J.)

1. This appeal has been preferred under Section 18 of the Rajasthan High Court Ordinance, 1949 challenging the legality and correctness of the order dated 26.09.1996 passed in S.B. Civil Writ Petition No. 2960/1996 and order dated 04.02.1997 passed in review petition No. 22/1997 whereby both have been dismissed by the learned Single Judge.

2. This Special Appeal has been preferred on the same grounds as set out in the writ petition.

3. We have heard learned counsel for the parties.

4. The petitioner while working as Executive Manager, came to be transferred by the order dated 07.02.1996 as Enquiry Officer in Bharatpur Depot. He filed a representation to the respondents against his transfer order submitting therein that the Chief Manager posted at Bharatpur is junior to him and it is not feasible for him to work under administrative control of his junior. His representation was rejected by the respondents. In the meantime, vide order No. 257 dated 27.04.1996, enquiry under Section 16 of the Rajasthan Classification, Control & Appeal Rules, 1958 was initiated against the appellant for non-compliance of the transfer order.

5. He approached the court by means of writ petition seeking to set aside the Notification dated 21.08.1991, whereby the Government issued the method and manner of selection to the post of Chief Manager. He also prayed that the order of transfer dated 07.02.1996 and order dated 14.03.1996 whereby the post has been delinked from the cadre be quashed. He further prayed for quashing of the enquiry initiated against him vide order No. 257 dated 27.04.1996. The learned Single Judge came to the conclusion that the post of Enquiry Officer has been delinked and as per the statement of the learned

counsel for the respondents before the learned Single Judge that the appellant had not to work under administrative control of the Chief Manager, therefore, the petitioner's grievance has been redressed and dismissed the writ petition.

6. So far as the prayer for setting aside the Notification dated 21.08.1991 is concerned, it has been brought to the notice of the court that appellant has approached the court after 5 years and that too while the process of selection has yet been initiated. Learned counsel for the respondents has made a statement at the bar that no outsider or junior to the petitioner has been posted as Chief Manager. The fundamental right of an employee is reckoned to be violated if he is not considered against the post. There was no occasion for the petitioner to come to the court seeking to quash the Notification as no fundamental right in terms of Article 16 of the Constitution of India has been violated. He is at liberty to approach the court as and when such occasion arises. This point has also been settled by the Hon'ble Supreme Court.

7. Another limb of the argument is that he has been transferred to work under his junior. The respondents issued order dated 14.03.1996, whereby the post has been delinked from the cadre and the petitioner has been permitted to work independently and not under the administrative control of the Chief Manager. Thus, this grievance of the petitioner has also been settled.

8. Consequently, we do not find any merit in this appeal which is accordingly dismissed.

(Dr.VINEET KOTHARI),J. **(R.C. GANDHI),J.**

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